

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:08-CV-286-BO

LINDA JOYCE AND LARRY MCCOY,      )  
  )  
  )  
  Plaintiffs, )  
  )  
  )  
  v. )   O R D E R  
  )  
  )  
PETER L. APPLETON,                    )  
  )  
  )  
  Defendant. )  
  )  
\_\_\_\_\_

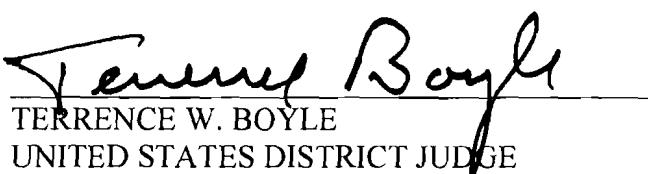
This matter is before the Court on Defendant's Motions to Dismiss (DE # 34 & 35) and Plaintiffs' Motions to Strike the Motions to Dismiss (DE #42 & 43); Defendant's Motion for Settlement Conference (DE #36); Plaintiffs' Motion to Strike the Motion for Settlement Conference (DE # 38); and Plaintiffs' Motion to Set Cause for Trial (DE #39).

Defendant's Motions to Dismiss (DE # 34 & 35) argue that this Court lacks subject matter jurisdiction pursuant and that Plaintiffs have not pled a claim upon which relief can be granted. In adopting the Memorandum & Recommendation of United States Magistrate Judge Daniel, this Court has already determined that subject matter jurisdiction exists and that Plaintiffs have set forth a claim for relief that is plausible on its face. Therefore, these Motions to Dismiss are DENIED. Consequently, Plaintiffs' Motion to Strike (DE # 42 & 43) are MOOT.

Defendant now requests a Court supervised settlement conference (DE #36). Because Defendant indicates a willingness to settle this matter, the Motion for Settlement Conference is GRANTED. This matter is hereby REFERRED to United States Magistrate Judge Webb to

conduct a settlement conference. Consequently, Plaintiff's Motion to Strike (DE #38) is DENIED, and Plaintiff's Motion to Set Cause for Trial (DE # 39) is premature and is thus DENIED. Should this attempt at settlement fail to resolve this matter, Defendant shall have leave to file a response to Plaintiff's Motion for Summary Judgment twenty one (21) days thereafter.

SO ORDERED, this 24 day of August, 2010.

  
TERRENCE W. BOYLE  
UNITED STATES DISTRICT JUDGE